



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

### TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080011

Petitioners, Richard and Lori Day, applied to the Building Commissioner for permission to demolish their existing detached garage and construct a new attached garage with a mudroom entry at their home at 12 Thorndike Street. The application was denied and an appeal was taken to this Board.

On 27 March 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 22 May 2008, at 7:00 p.m. on the 2<sup>nd</sup> floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the attorney (if any, of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 1 and 8 May 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **RICHARD AND LORI DAY**  
Location of Premises: **12 THORNDIKE ST BRKL**  
Date of Hearing: **05/22/2008**  
Time of Hearing: **7:00 p.m.**

Place of Hearing: **Main Library, 2<sup>nd</sup>. floor**

A public hearing will be held for a variance and/or special permit from

1. **5.60 Side Yard Requirements, Variance Required.**
2. **5.70 Rear Yard Requirements, Variance Required.**
3. **5.43 Exceptions to Yard and Setback Regulations, Special Permit Required**

of the Zoning By-Law to permit to demolish an existing garage, construct a new garage, and add an entry/mud room at **12 THORNDIKE ST BRKL.**

Said Premise located in an **T-5** zoning district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar*

*at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr and Board Members Murray Shocket and Kathryn Ham. The owners, also present were represented by their architect, Andrew Reck of Oak Hill Architects, Inc., 472 Boston Post Road, Weston, MA 02493.

Mr. Reck described the site and neighborhood as a three-story, single-family, Victorian house located near the intersection of Thorndike Street and Winchester Street. Constructed in 1890, the residence features an asymmetrical form with steep pitched roof and bay windows. The property has a detached garage located at the western corner of the rear yard approximately six inches from the side and rear lot lines. The surrounding neighborhood consists of single and two-family residential properties. He said



that his clients are proposing to demolish the existing detached garage and constructing a new attached garage and mudroom. The existing two-car garage, located at the western corner of the rear yard, will be replaced with a new attached two-car garage set farther away from the rear property line. The garage will be connected to the main house via a new two-story solarium-style mudroom/stairway addition, which will provide access to the basement and first floor as well as access the roof deck and rear yards. Atop the garage will be a roof deck bordered by planted landscaping; a railing will run along the garage's side and rear roof lines, and a parapet wall and pergola entrance will be featured in the front. The exterior of the garage will be finished in either stucco or wood siding, and the solarium addition will be finished with red cedar with a red copper standing-seam roof and downspouts. Mr. Reck stated that the plan would result in more useable open space in the rear yard for the children to play as they plan to remove the existing staircase and entry at the northeastern corner of the house. He also stated that by moving the garage forward, closer to the street, there would be less exposed driveway in front of the home. Mr. Reck said that the design was respectful of the quirky nature of the existing structure. Mr. Reck submitted large scale photographs of the existing conditions to be maintained as part of the official record.

The Chair asked about a letter dated 20 May 2008 from Philip Hresko regarding concerns of the abutters, Barbara and Paul Marks, and asked Mr. Reck to address those concerns. Mr. Reck stated that they had just received the letter but in an effort to facilitate neighborhood harmony they met with the Mr. and Mrs. Marks shortly before the hearing to discuss their concerns. He said that a portion of the rear retaining wall is in fact a footing approximately two feet high. He said that a structural engineer visited the site and recommended that that after the garage roof is removed the remaining walls will be taken down to just below grade so they may be covered with landscaping and help preserve the integrity of the retaining wall which will be very low after the landscaping is installed. As to the drainage issue, Mr. Reck addressed concerns that there has been some erosion from run-off onto the neighbor's property. He said that the existing perimeter drain which is very old may not be working properly. He said that his

client is proposing a drywell system in front of the garage with a trench drain to help ameliorate the runoff issue. He said that the existing wall may not have to be replaced but they would rely on the report of the structural engineer in this regard. He said that the report would be available for their neighbors to review. Regarding potential damage to the neighbors landscaping, Mr. Reck assured the Board that his client would be responsible for any damage caused to their neighbor's landscaping within reason. He said that best practices would be employed to avoid any damage. As to the suggested fence, Mr. Reck said that should his clients decide to place a fence at the rear of their property they would certainly consult with their neighbors. Mr. Reck said that his clients respected their neighbors concerns and would make every effort to allay their fears.

As to counterbalancing amenities, Mr. Reck said that his clients are providing a considerable increase in useable open space as well as additional landscaping in the front and rear of the home. He said his clients were decreasing significantly the impervious driveway surface with the proposed plan. The plan includes a deck on top of the garage which will have planters to the side and rear of the deck. As to lighting on the deck, Mr. Reck said that they had not considered lighting at this point but if included, there may be landscape lighting as well as a sconce at the door to the connector. Regarding the mature trees along the southwestern property line, Mr. Reck stated that the two trees adjacent to the front property line will be retained and whether the two closer to the proposed garage can be saved will be determined as construction conditions warrant. Mr. Reck stated that his clients need relief from the side and rear setback requirements of the by-law as well as a special permit because the existing home is pre-existing, non-conforming.

The Chair asked whether anyone wished to speak in favor or opposed to the proposal. Mr. Paul Marks, the abutter to the rear at 7 Columbia Terrace said that they met with the petitioners earlier in the evening and they are very supportive of the proposal. He stated that their primary concern was potential



impact on their landscaping and the retaining wall. He said that he would appreciate oversight of the project, particularly the retaining wall, by an engineer.

Lara Curtis, Planner, delivered the findings of the Planning Department.

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback</b>	7.5 feet	0.5 feet	0.5 feet	Special Permit*
<b>Rear Yard Setback</b>	30 feet	0.9 feet	14.8 feet	Special Permit*

\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has stated that the removal of a side stair and vestibule on the other side of the house, increasing that side yard setback, and the improvement in the garage's rear yard setback will be the proposal's counterbalancing amenity.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a non-conforming structure.

Ms. Curtis said that the Planning Board is not opposed to this proposal for a new attached garage and mudroom/stairway addition on the side of 12 Thorndike Street. The proposal provides a greater rear yard setback while maintaining the existing garage's side yard setback and the connecting stairway/mudroom addition is attractively designed. Due to the land's slope, the deck on the garage's roof should not overlook other properties so as to create a privacy concern, and landscaping on the roof will buffer the deck area. Therefore, she said, the Planning Board recommended approval of the proposal and the submitted plans, titled "The Day Residence, 12 Thorndike Street, Brookline, Massachusetts," prepared by Oak Hill Architects, and last dated 2/6/08, and the proposed site plan prepared by Bruce Bradford, and last dated 5/8/08, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final

**elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair then called upon Michael Shepard, Building Commissioner, to deliver the Building Department comments. Mr. Shepard stated that he had visited the site and it is a residential neighborhood of well-kept properties. He said that because the existing garage is on the rear corner of the lot there is a relatively large expanse of paved surface and that the proposal would help rectify this. Mr. Shepard said that the Board may consider making the drainage plan subject to the approval of the DPW and require a report from a structural engineer and proposed construction phasing related to the retaining wall before the issuance of a building permit. He said that the Building Department had no issue with the relief required, or the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that is desirable to grant special permits to alter a pre-existing, non-conforming structure under Section 8.02.2 and waive the side and rear setback requirements in light of the counterbalancing amenities offered by the petitioner under Section 5.43 of the bylaw. The Board made the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the board voted unanimously to grant all the requested relief with the following conditions:

- 1. Prior to the issuance of a building permit, final elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**



2. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
3. Prior to the issuance of a building permit, the applicant shall submit a drainage plan prepared by an engineer for review and approval of the Department of Public Works.
4. Prior to the issuance of a building permit, the applicant shall have the existing retaining wall inspected by a structural engineer and a report submitted to the Building Commissioner with recommendations to assure the integrity of the structure both during and post construction.
5. Damage done to neighboring landscaping will be reasonably replaced by the applicant.


Unanimous Decision of  
the Board of Appeals

  
Enid Starr

Filing Date: June 6, 2008

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

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